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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. 82 5046

OWEN W. CRUMPACKER, Appellant,

v.

INDIANA SUPREME COURT DISCIPLINARY COMMISSION, Appellee.

ON APPEAL FROM THE SUPREME COURT OF INDIANA

JURISDICTIONAL STATEMENT

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Pro se

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This is an appeal from a final judgment in a criminal case entered by the Supreme Court of Indiana, the court of last resort. The court tried and convicted appellant, the defendant below, of the statutory crime of indirect criminal contempt sentencing him to serve 90 days in the Indiana State Farm. In addition, the court fined appellant, a private citizen, $500 and sentenced him to a concurrent term of 90 days in the Indiana State Farm for the statutory crime of direct criminal contempt, both terms to be served concurrently. Appellant was denied bail and completed serving his time on May 11, 1982. The prosecution arose out of an original action filed in the Supreme Court of Indiana on September 17, 1974 seeking to disbar appellant, who, prior to November 29, 1978 was a member in good standing of the bar of the Indiana Supreme Court.

QUESTIONS PRESENTED BY THE APPEAL

1. Whether Burns Indiana Statutes Annotated, Code Edition, Title 33 § 33-2-1-4 (4-110), is violative of the IVth, Vth (double

jeopardy and due process provisions), VIth (speedy and public trial by an impartial jury in the district wherein the crime shall have been committed, right to be informed as to the nature and cause of the accusation, compulsory process for obtaining witnesses, assistance of counsel for his defense), VIIIth (excessive bail and cruel and unusual punishment) and XIVth (due process and equal protection) Amendments to the United States Constitution.

2. Whether Burns § 33-2-1-4 (4-110), supra, vests the Supreme Court of Indiana with original jurisdiction to institute, prosecute, and convict a private citizen of the statutory crimes of direct and indirect criminal contempt.

3. Whether the void character of the disbarment order (violation of the double jeopardy and due process clauses of the Vth and XIVth Amendments to the Constitution) may be urged as a defense in a prosecution by the Supreme Court of an individual for alleged indirect criminal contempt for violating that order.

4. Whether the due process clauses of the Vth and XIVth Amendments to the United States Constitution prevent the Supreme Court of Indiana from acting as judge of criminal charges filed and prosecuted by it.

5. Whether the Supreme Court of Indiana was obliged to afford appellant compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense pursuant to the provisions of Amendment VI of the United States Constitution.

6. Whether the Supreme Court of Indiana was compelled to permit appellant to appear before it, pro se, in oral argument on the evidence in accordance to the VIth Amendment of the United States Constitution prior to the entry of its findings and judgment against him.

7. Whether the due process clause of the Vth Amendment to the United States Constitution precludes prosecution and imprisonment

for alleged violation of an order that is vague and indefinite. ("It is therefore ordered that . . . the Respondent be, and he hereby is disbarred as an attorney in the State of Indiana.")

8. Whether appellant, under the due process clause of the Vth Amendment, had an absolute right to be physically present in open court (or in chambers) when the Supreme Court of Indiana rendered its findings and judgment finding him guilty and sentencing him to prison.

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OPINIONS BELOW

The findings and decisions of the Supreme Court of Indiana appear in the appendix herein, p. 1a, et sequitur, infra.

The Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Officer appointed by the Supreme Court to hear and determine the initial charges filed against appellant on September 17, 1974 are not reported. They were filed by the Hearing Officer, Judge Bruce W. Douglas of the Porter Superior Court, Valparaiso, Indiana on November 9, 1976 and are reprinted in the appendix herein, p. 1a thru p. 15a, infra.

The 27 - page Disciplinary Action filed, per curiam, in the office of the Clerk of the Indiana Supreme Court at Indianapolis, Indiana on November 29, 1978 is reported in 269 Ind. 630, 383 N.E. 2d 36. It is reprinted at pages 1b through 27b of the appendix, infra. The 10-page findings and sentence, captioned "Contempt Proceedings," are reported officially in ___ Ind. ___, 431 N.E. 2d. 91 (1982). The decision, opinion, and judgment were filed in the office of the Clerk of the Supreme Court on February 11, 1982. They are reprinted at pages 1c through 10c of the appendix, infra. The Order of Commitment appears at appendix 1d-2d, infra. An order was entered on February 5, 1982 denying appellant's "Motion to Strike and Expunge Order to Appear for Pronouncement of Judgment Filed on January 27, 1982, for Lack of Jurisdiction Over the Person of the Purported Respondent, Owen W. Crumpacker, and the Subject Matter of the Proceedings" (see appendix 1e, infra).

Appellant's motion to stay execution and fix bail pending an appeal to this Court was denied on the same day that the contempt findings and sentence were announced in open court and filed. Appellant's Notice of Appeal was filed on February 5, 1982. It is attached to this Jurisdictional Statement at p. 1g of the Appendix, infra.

The 27-page Disciplinary Action of November 29, 1978, concludes as follows:

> "It is therefore ordered that by reason of the misconduct found in this cause the Respondent be and hereby is disbarred as an Attorney in the State of Indiana." (App., p. 24b-p. 25b, infra.

The alleged act of direct criminal contempt occurred on July 2, 1981 and was taken under advisement:

> JUDGE GIVAN: Mr. Crumpacker, I have told you and told you that we want you to quit this filibustering; and we want you to proceed for the record. Now you have consistently refused to do that. I want to dictate to the Reporter.
>
> Miss Reporter, show that Mr. Crumpacker has refused repeatedly the admonitions of this Court to proceed with this matter. In so doing he has shown contempt for this Court and this Court's processes.
>
> Now, Mr. Crumpacker, do you have an answer for that citation?
>
> MR. CRUMPACKER: Yes. Your Honor, I apologize; and I want the Court to understand that it is not my offense -- my desire to offend the Court and I'm deeply apologetic; and my only feeling is that I think in the preparation of my defense that the evidence is material and I will not -- if the Court believes that the motion is denied, I will accept and abide by the ruling of the Court; and I hope that I will be able to proceed with the defense.

Appellant received the maximum sentence authorized by the criminal contempt statutes, Burns' Ind. Codes St., Title 34, 34-4-7-3 (3-903) Indirect and 34-4-7-1 (3-901) Direct:

> "In view of our findings, the Respondent, Owen W. Crumpacker, is sentenced to serve a term of ninety days in the Indiana State Farm for indirect criminal contempt of this Court, sentenced to serve a concurrent term of ninety days in the Indiana State Farm for the direct criminal contempt of this Court, and is further fined in the amount of five hundred dollars ($500.00). Those provisions of law authorizing the diminution of sentence for good time served shall not apply." (See App. p. 10c, infra.)

JURISDICTION

A concise statement of the grounds on which the jurisdiction of the court is invoked is as follows:

(i) On September 17, 1974, the proceedings below were commenced as an original action in the Indiana Supreme Court. The charges against appellant, a practicing attorney, were prepared in secret in mid-August of 1974 by a group of Hammond, East Chicago, and Gary lawyers who were either adversaries of appellant's clients or represented adversaries of appellant's clients in pending litigation. The Hearing Officer appointed by the Supreme Court to hear and determine the charges found in appellant's favor on each of the 20 counts or charges leveled against appellant. The decision was filed on November 9, 1976. No further hearings were held or had, and no evidence was offered or received after November 9, 1976. (See appendix p. 1a, infra.)

On November 29, 1978, a 27-page Disciplinary Action, per curiam, was either filed or permitted to be filed in the office of the Clerk of the Indiana Supreme Court purporting to permanently disbar appellant as an attorney in Indiana. (See appendix, p. 1b, infra.)

On January 23, 1981, the Supreme Court of Indiana, through its disciplinary arm, appellee Indiana Supreme Court Disciplinary Commission, instituted criminal contempt proceedings against appellant for alleged willful and intentional refusal to obey the permanent disbarment order of November 29, 1978 appearing in the 27-page Disciplinary Action. The Supreme Court conducted the trial on June 29, July 2, July 16, and July 21, 1981.

On February 11, 1982, a 10-page document captioned "Contempt Proceedings" was served upon appellant and filed with the Clerk of the Indiana Supreme Court. Simultaneously an order of commitment signed by the Chief Justice was served and filed. Appellant's motion for stay and to fix bail to enable him to appeal was denied. Appellant's motion for a temporary postponement of the execution of the order of commitment was denied. Appellant was taken into custody by the sheriff of the Indiana Supreme Court and two members of the state police and transported to the Department of Correction (Indiana State Farm) at Putnamville, Indiana. Appellant's further motion for a stay and to fix bail was denied by this Court. He served out the full term of his sentences, without time off for good behavior (which he earned), and was released on May 11, 1982. (See appendix, p. 1c-p. 10c, p. 1d and p. 1e, infra).

(ii) The judgment sought to be reviewed was agreed upon internally and in a secret session on January 27, 1982. Appellant's notice of appeal was served and filed in the Indiana Supreme Court on February 5, 1982. The judgment was officially released and served upon appellant by the sheriff of the Indiana Supreme Court in open court and filed of record with the clerk on February 11, 1982.

The time for filing the jurisdictional statement was extended to and including July 11, 1982.

(iii) Appellant contends that the statute by virtue of which the Supreme Court of Indiana has proceeded to charge, try and convict him, i.e. IC 33-2-1-4, is repugnant to Amendments IV, V, VI, VIII and XIV of the United States Constitution. 28 U.S.C. § 1257(b). Appellant asserts that his appeal is entitled to priority under 28 U.S.C. § 2102.

Appellant is obliged to proceed pro se and in forma pauperis. The initial attack upon appellant in the Supreme Court of Indiana was launched by Hammond attorney Edmond J. Leeney, now deceased, on January 22, 1972 in the case of Armina Thorpe v. The Calumet National Bank of Hammond, Administrator. The attack took the form of private correspondence by Mr. Leeney with Chief Judge Norman F. Arterburn of the Indiana Supreme Court. The Leeney charges were abandoned in favor of the written grievance of Hammond attorney Saul I. Ruman filed on September 25, 1973 with the executive secretary of the Indiana Supreme Court Disciplinary Commission, one John B. Ramming. On June 14, 1974, East Chicago attorney Rudolph Val Dawson obtained a resolution from the Disciplinary Commission authorizing the interested attorneys to proceed on the Saul I. Ruman complaint. None of these activities were disclosed to appellant. Appellant has been required to exhaust all of his financial means in an effort to protect and preserve his professional standing and his personal liberty.

The final judgment in a criminal proceeding is the sentence. Berman v. United States, 302 U.S. 211; Parr v. United States, 351 U.S. 513, 518. The judgment of the Indiana Supreme Court announced and filed on February 11, 1982 is final in all respects. The fact that appellant was compelled to serve the full sentence pronounced does not make the issues presented moot.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

AMENDMENT IV--SEARCHES AND SEIZURES. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (U.S.C.A., Const., p. 361).

AMENDMENT V--CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (U.S.C.A., Const., p. 4).

AMENDMENT VI--JURY TRIAL FOR CRIMES, AND PROCEDURAL RIGHTS. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence. (U.S.C.A., Const., p. 4)

AMENDMENT VIII--EXCESSIVE BAIL, FINES, PUNISHMENTS. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. (U.S.C.A., Const., p. 758).

AMENDMENT XIV--CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION. Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (U.S.C.A., Const., p. 33)

ARTICLE 1, BILL OF RIGHTS, SECTION 11--Unreasonable search or seizure.--The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized. (Burns Ind. Stat. Ann. Code Ed., Const., p. 10).

ARTICLE 1, BILL OF RIGHTS, SECTION 12--Courts open--Due course of law--Administration of justice. All courts shall be open; and every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay. (Burns Ind. Stat. Ann. Code Ed., Const., p. 21).

ARTICLE 1, BILL OF RIGHTS, SECTION 13--Rights of accused. In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor. (Burns Ind. Stat. Ann. Code Ed., Const., p. 36).

ARTICLE 1, BILL OF RIGHTS, SECTION 14--Former jeopardy--Self-incrimination. No person shall be put in jeopardy twice for the same offense. No person, in any criminal prosecution, shall be compelled to testify against himself. (Burns Ind. Stat. Ann. Code Ed., Const., p. 55,)

ARTICLE 1, BILL OF RIGHTS, SECTION 16--Excessive bail, punishment, and penalties. Excessive bail shall not be required. Excessive fines shall not be imposed. Cruel and unusual punishments shall not be inflicted. All penalties shall be proportioned to the nature of the offense. (Burns Ind. Stat. Ann. Code Ed., Const., p. 64.)

ARTICLE 1, BILL OF RIGHTS, SECTION 17--Bailable offenses. Offenses, other than murder or treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable, when the proof is evident, or the presumption strong. (Burns Ind. Stat. Ann. Code Ed., Const., p. 68,)

INDIANA CONSTITUTION, ARTICLE 7, JUDICIAL, SECTION 7--Jurisdiction of Supreme Court. The Supreme Court shall have no original jurisdiction except in admission to the practice of law; discipline or disbarment of those admitted; the unauthorized practice of law; discipline, removal and retirement of justices and judges; supervision of the exercise of jurisdiction by the other courts of the State; and issuance of writs necessary or appropriate in aid of its jurisdiction. (Burns Ind. Stat. Ann. Code Ed., Const., p. 209.)

ARTICLE 1, CHAPTER 5, TITLE 33, SECTION 33-1-5-1 (4-7401)--Unlawful practice--Prohibition. It is hereby made unlawful and a violation of this act (33-1-5-1--33-1-5-3) for any person to hold himself out as a practicing lawyer, to conduct the trial of a case in any circuit, criminal, city, justice, probate, juvenile, commissioners, or any other court of this state, or to engage in the business of a practicing lawyer, without first having been duly admitted as an attorney-at-law in some court of general jurisdiction or of appellate jurisdiction of this state. (Acts 1913, ch. 347 § 1, p. 940.) (Burns Ind. Stat. Ann. Code Ed., Title 33, p. 9.)

ARTICLE 1, CHAPTER 5, TITLE 33, SECTION 33-1-5-2 (4-7402)--Penalty. Any person who shall violate any of the provisions of this act (33-1-5-1--33-1-5-3) shall be deemed guilty of a misdemeanor and, on conviction thereof, may be fined in any sum not exceeding $100, to which may be added imprisonment in the county jail not exceeding thirty (30) days. (Acts 1913, ch. 347, § 2, p. 940.) (Burns Ind. Ann. Code Ed., Title 33, p. 11.)

ARTICLE 2, CHAPTER 1, TITLE 33, SECTION 33-2-1-4 (4-110)--Oaths--Fines for contempt. Such court shall have full power to impose and administer all necessary oaths; to punish by fine and imprisonment for contempt of its authority and process; and to compel the attendance of witnesses by attachment and fine. (2 R. S. 1852, ch. 1, § 6, p. 1.) (Burns Ind. Ann. Code Ed., Title 33, p. 34.)

ARTICLE 2, CHAPTER 3, TITLE 33, SECTION 33-2-3-1 (4-7405)--Admission to practice law--Restraint against unauthorized practice--Jurisdiction of Supreme Court. The Supreme Court of this state shall have exclusive jurisdiction to admit attorneys to practice law in all courts of the state and exclusive jurisdiction to issue restraining orders and injunctions in all cases involving the unauthorized practice of the law under such rules and regulations as it may prescribe. (Acts 1931, ch. 64, § 1, p. 150; 1951, ch. 143, § 1, p. 382.) (Burns Ind. Stat. Ann. Code Ed. Title 33, p. 35.)

ARTICLE 4, CHAPTER 7, TITLE 34, SECTION 34-4-7-1 (3-901)--Direct--Disturbing business of court. Every person who shall, by the commission of any felony, misdemeanor, or other unlawful act; or who by talking, moving about, or by signs, or gestures, or in any other manner, in any court of record, while the same is open for the transaction of business, and engaged therein, create any noise or confusion therein, whereby the business and proceedings of said court shall be disburbed, shall be deemed to be guilty of a direct contempt of said court. (Acts 1879 (Spec. Sess.), ch. 35, § 1, p. 112.) (Burns Ind. Stat. Ann. Code Ed. Title 34, p. 735.)

ARTICLE 4, CHAPTER 7, TITLE 34, SECTION 34-4-7-3 (3-904)--Indirect--Disobeying process. Every person who shall be guilty of any wilful disobedience of any process, or any order lawfully issued by any court of record, or by the proper officer thereof, under the authority of law, or the direction of such court, after the same shall have been served upon him, shall be guilty of an indirect contempt of the court from which such process or order shall have issued. (Acts 1879 (Spec. Sess.), ch. 35, § 3, p. 112.) (Burns Ind. Stat. Ann. Code Ed. Title 34, p. 738.)

ARTICLE 4, CHAPTER 7, TITLE 34, SECTION 34-4-7-6 (3-906)--Punishment. Punishments for contempts of court, under this act (34-4-7-1--34-4-7-10), may be by fine or imprisonment, or both, in the discretion of the court inflicting the same, but no fine shall exceed the sum of five hundred dollars ($500), nor shall any imprisonment extend beyond the term of three (3) months. (Acts 1879 (Spec. Sess.), ch. 35 § 6, p. 112.) (Burns Ind. Stat. Ann. Code Ed. Title 34, p. 742.)

CONCISE STATMENT OF THE CASE

A. Stage in the Proceedings at Which the Questions were Raised

(1) The verified information for contempt alleging twenty-nine (XXIX) counts of alleged "unauthorized practice of law" was filed in the Supreme Court of Indiana on January 23, 1981. A show cause order issued over the signature of Richard M. Givan, Chief Justice of Indiana, returnable at the Supreme Court chambers, State House, Indianapolis, Indiana on March 2, 1981 was served upon appellant by the sheriff of Lake County on February 13, 1981. On February 27, 1981 appellant appeared by attorney John M. Lyons and filed his verified motion to quash the show cause order and to dismiss the verified information for contempt on the ground that the proceedings were fully and finally put at rest by the findings entered by the Hearing Officer in appellant's favor on November 9, 1976. Appellant urged that the 27-page Disciplinary Action either filed or permitted to be filed on November 29, 1978 was void for lack of notice and/or hearing and that the Supreme Court of Indiana lost all jurisdiction over the person of appellant and the subject matter of the proceedings when the Supreme Court, on April 12, 1979, entered an order overruling and denying appellant's motion for relief from and reconsideration of the Disciplinary Action entered on November 29, 1978. The motion was supplemented on June 29, 1981 by the filing of a verified motion to strike and dismiss and an amended and supplemental motion to strike and dismiss the verified motion for contempt and petition for order to show cause. Appellant urged that the Supreme Court of Indiana declare Burns Indiana Statutes Annotated, Code Edition, Title 33 § 33-2-1-4 (4-110) void as being repugnant to Amendments V, VI, and XIV of the United States Constitution and the Federal Civil Rights Act § 42 U.S.C. 1983 and § 42 U.S.C. 1985. The question was again raised as to the void character of the statute under

which the Supreme Court of Indiana was proceeding in the third and fifth paragraphs of appellant's verified return (answer) to the verified information for contempt. The Supreme Court overruled appellant's motions, at the commencement of the trial on June 29, 1981. The Supreme Court disposed of the issue raised by the third and fifth paragraphs of answer in the 10-page, per curiam decision filed on February 11, 1982:

> A second general area of contention raised in Respondent's return can be summarized as an assertion that the present contempt proceeding is unconstitutional. Respondent argues that because the unauthorized practice of law could be a crime, the contempt proceeding is unconstitutional in that it does not afford the safeguards available to a criminal defendant, citing State ex rel Indianapolis Bar Assn. v. Fletcher Trust Company, (1936) 211 Ind. 57, 5 N.E.2d 538. Respondent goes on to conclude that IC 33-2-1-4, which specifically gives this Court statutory authority to punish for the contempt, is unconstitutional. This latter allegation is unsupported by authority. (Appendix, p. 4c, infra.)

(2) The issue as to whether or not the Supreme Court of Indiana, sitting in Marion County has jurisdiction to institute and prosecute criminal proceedings against a private citizen living in Lake County for crimes allegedly committed in Lake County was raised in the same motions and verified returns (answers) herein above referred to. The issue was disposed of in the same manner:

> "It is not surprising that Respondent fails to cite any authority for his contention that IC 33-2-1-4 is unconstitutional. There is none. There is no doubt this Court possesses inherent and statutory power to punish by fine and imprisonment for contempt of its authority and powers. In re Lemond, (1980) Ind., 413 N.E.2d 228, In re Perrello, (1973) 260 Ind. 26, 291 N.E.2d 698. (Our emphasis) (Appendix, p. 5c, infra.)

(3) The void character of the disbarment order as a defense to the criminal contempt prosecution was urged in the motion to strike and dismiss and the amended and supplemental motion to strike and dismiss served and filed on June 29, 1981. When appellant's motions were overruled in open court on June 29, 1981,

he re-urged the void character of the November 29, 1978 Disciplinary Action in his third and fourth paragraphs of return (answer). The Supreme Court ruled adversely in the per curiam contempt decision:

> "Respondent further alleges that this Court's Order of Disbarment was entered without hearing and notice, that the findings of the hearing officer appointed in the disciplinary action constituted the final adjudication of the issues and the Respondent was subjected to double jeopardy in that the Hearing Officer entered findings of fact and the Supreme Court did not accept such findings. In sum, Respondent is attempting to attach constitutional import to this Court's failure to adopt the Hearing Officer's findings." (Appendix, p. 3c, infra.)
>
> * * *
>
> "In view of the above considerations, we find all arguments of Respondent to the effect that this Court's order of disbarment entered November 29, 1978, is void to be without merit. We specifically find such order valid; the Respondent was disbarred as an attorney in this state on that date." (Appendix, p. 4c, infra.)

(4) Appellant raised the due process issue with reference to the Court acting as prosecutor and judge at his earliest opportunity and on the first day of the trial, before any evidence was introduced. (tr. vol. one, p. 14.) The Court, speaking through Givan ruled: "We are going to overrule the motion for this Court to disqualify itself." On July 2, 1981, appellant served and filed an extensive motion to vacate and set aside the per curiam Disciplinary Action of November 29, 1978 and to dismiss the amended verified complaint for Disciplinary Action. A 59-page supporting affidavit was filed on July 10, 1981. The Court, as disclosed on the face of the decision, proceeded to find appellant guilty and sentence him to imprisonment.

(5) Appellant's counsel, John M. Lyons, was granted leave to withdraw his appearance on June 22, 1981, (seven days in advance of the trial and before the Court had ruled on the motion to strike and dismiss). When the order arrived in the mail on Thursday, June 25, 1981, appellant telephoned the Court asking for a continuance to enable him to obtain counsel. The request was denied. (Appendix, p. 1g, infra.)

The motion was renewed orally before the commencement of the trial on Monday, June 29, 1981. The Court refused to permit the appellant to have counsel: "Judge Hunter: The opinion of those Constitutions is to the effect that you have a right to represent yourself." (tr. vol. one, p. 8.)

(6) The question of appellant's right under the VIth Amendment to argue the case was presented after the submission of evidence was concluded on July 21, 1981. Appellant was directed to file purposed findings of fact. (Appendix, p. 1c, infra.) As soon as the court reporter had completed the preparation of the transcript of the evidence, and after the purposed findings were filed, appellant served and filed a written request for oral argument before the Court on the question of special findings of fact. Attached to the request was a copy of the opinion of the Supreme Court of the United States in the case of Herring v. New York 422 U.S. 852, 95 Supreme Court 2550 (1975). The Court's ruling was entered in secret on January 27, 1982. It was revealed of record in the 10-page per curiam decision filed on February 11, 1982: "Lastly, Respondent's Motion for Oral Argument is now overruled." (Appendix, p. 2c, infra.)

(7) Whether the due process clause of the Vth Amendment bars prosecution because of the vague and indefinite character of the disbarment order was first presented in the verified motion to strike and dismiss served and filed on July 2, 1982, the second day of the trial. Appellant made demand upon the Court to define the conduct which would or might constitute "the illegal practice of law." Appellant cited, in his motion, the decision and opinion of the Indiana Supreme Court in the case of State ex rel Indianapolis Bar Association v. Fletcher Trust Company (1937) 211 Ind. 27. Appellant's motions for discharge and for the dissolution and dismissal of the verified information were denied in the per

curiam decision filed on February 11, 1982. (See Contempt Proceedings, Appendix, p. 2c, infra.)

(8) Appellant's constitutional right to be physically present when the judgment was entered was first presented in his motion to be released from confinement filed on or about March 15, 1982. Before being taken to Putnamville on February 11, 1982, the Court administrator, Bruce Kotzan, advised appellant that the Court had an internal docket in the case. On February 11, 1982, it became apparent that the per curiam decision, 10 pages in length, had been prepared on or before January 27, 1982 when the order to appear for sentencing had been entered and sent to the sheriff of Lake County for service upon the appellant. The petition for release from confinement was ignored.

B. Statement of Facts Material to a Consideration of the Questions Presented

(1) Appellant Owen W. Crumpacker, is and has been for many years a citizen, resident, voter, and taxpayer of Hammond, Lake County, Indiana residing at 17 Glendale Park. He is a citizen of the United States within the definition of the Constitution of the United States and the Federal Civil Rights Acts (42 USCA 1983, 1985, and 1988). He is 70 years of age and resides with his wife, Mary Eleanor N. Crumpacker, at the address hereinabove mentioned. Appellant was admitted to the bar of the Supreme Court of Indiana on January 4, 1939. He was engaged in the active practice of law with offices in Hammond until October 20, 1978. On October 20, 1978, appellant was the Republican candidate for Congress of the United States in the November 7, 1978 federal election. He was a candidate for the Republican nomination in the May 7, 1980 and May 5, 1982 primary elections. He was the duly elected Republican

precinct committeeman in the precinct of his residence and was the duly elected delegate to the Republican State Convention from his delegate district. In February and March of 1979, both appellant and his wife filed actions in the United States District Court in Hammond under the Federal Civil Rights Act and Organized Crime Control Acts. Both appellant and his wife had substantial interests in long pending condemnation cases involving land sought to be acquired by the Government in connection with the Indiana Dunes National Lake Shore Act of 1966.

One case in particular, E. D. Crumpacker and Dorothy A. Crumpacker v. Owen Windle Crumpacker et al. USDC Hammond Division, Civil No. 75-H-212 was being actively defended when the following entry was made on the bench docket sheet at Indianapolis on November 29, 1978:

> "It is therefore ordered that by reason of the misconduct found in this cause the Respondent be and hereby is disbarred as an Attorney in the State of Indiana." (See, In the Matter of Owen W. Crumpacker, Supreme Court of Indiana, Cause No. 974 S 187, filed November 29, 1978, and reported in 269 Ind. 630, 383 N.E.2d 36.) (See Appendix, Pages 1b through 27b, infra.)

(2) The verified petition for disciplinary action was filed in the Supreme Court of Indiana on September 17, 1974. Appellant, as respondent in the disciplinary action, in due course, filed answer to the twenty (20) Count amended verified complaint for disciplinary action. The first hearing officer chosen by the Supreme Court to hear and determine the charges, Honorable Alan Rasor, Judge of the Kosciusko Superior Court, granted appellant's (respondent's) motion for a public trial in the City and County of appellant's residence: Hammond, Indiana, and arranged for a hearing in the council chambers of the Hammond City Hall. In August of 1975, Judge Rasor vacaced all orders entered in February at the pretrial conference and resigned. The

Supreme Court, simultaneously with the acceptance of Judge Rasor's resignation, appointed Honorable Bruce W. Douglas, Judge of the Porter Superior Court, as its hearing officer (fact finder) to hear and determine the charges and to make specific findings of fact, enter conclusions of law, and make recommendations to the Supreme Court thereon. West's Ann. Ind. Code, Title 34, A & D Rule 23, § 14(f), p. 873.

(3) A prolonged adversary trial was conducted in the courtroom of the Porter Superior Court consuming thirty-one (31) trial days between September 29, 1974 and December 3, 1975. By agreement, the record was kept open to enable appellant to supply additional documents consisting mainly of court records.

(4) On November 9, 1976, the hearing officer, Judge Douglas, filed his specific findings of fact on each of the twenty (20) Counts tried, stated his conclusions of law thereon, and made his recommendations supported by a four thousand and seven hundred (4,700) page transcript and thousands of pages of exhibits. Appellant (respondent) was found innocent on each of the charges filed against him. A copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS of the hearing officer is attached hereto and made a part hereof as appellant's appendix, pages 1a through 15a, infra.

(5) Saul I. Ruman, a practicing lawyer, who, on September 25, 1973, had filed the original written grievance against appellant at the administrative level (A & D Rule 23, § 10, West's Title 34, p. 869) filed a petition for review. Appellant's objections and supplemental objections were filed over a period of a year. The Supreme Court of Indiana never ruled on the petition to review or the objections. (See, A & D Rule 23, § 15, West's Title 34, p. 874.) No hearings of any kind were held or had in the Supreme Court. The Clerk's docket sheet shows that the massive record was

never transmitted to the Supreme Court for examination. The last entry on the docket sheet, prior to November 29, 1978, reads as follows:

1978, Jan. 23 Order: Supplemental Objections III through VII are permitted to be filed in this cause. Givan, C.J.

The exhibits offered and received in evidence were in the basement of appellant's residence at 17 Glendale Park, Hammond, Lake County, Indiana, when the Disciplinary Action was filed or caused to be filed in the office of the Clerk of the Supreme Court of Indiana on November 29, 1978, as aforesaid. The exhibits had never been either submitted to or examined by the Supreme Court of Indiana. The transcript of the testimony and the proceedings held and had at the trial, some 4,700 pages in length, was never either examined by or read by the Supreme Court of Indiana or any member thereof prior to November 29, 1978.

(6) On November 29, 1978, appellant was in the LaPorte Hospital suffering from a stroke and cardiac infarction and was under the protective custody of the United States District Court, Hammond Divison, in a habeas corpus suit then on trial, to wit: United States of America ex rel. Owen W. Crumpacker, Petitioner v. James Arnold, Sheriff of LaPorte County, Respondent, et al., Misc. No. 403. The twenty-seven (27) page Per Curiam Disciplinary Action mentioned in rhetorical paragraph 1, supra, was filed at Indianapolis on November 29, 1978, and brought to Judge McNagny's attention in a front page Gary Post Tribune news story dated November 30, 1978. A copy of the twenty-seven (27) page document was delivered to Judge McNagny's chambers on December 4, 1978. Appellant (petitioner in the habeas corpus suit and respondent in the disciplinary case)

was released from custody in LaPorte pursuant to an order entered by the late Judge Phil M. McNagny, Jr., on December 13, 1978, to enable him to receive sophisticated heart and artery treatment in the Wesley Pavilion of the Northwestern Medical Center in Chicago.

(7) Upon his release from the LaPorte Hospital, and while confined to his residence, appellant, on December 16, 1978, filed a motion for stay of proceedings under Supreme Court A & D Rule 23, Sections 3, 26 and 27 (6). An order was entered on January 12, 1979 signed by Chief Justice Richard M. Givan denying the motion for a stay. Upon his release from the Northwestern Medical Center appellant prepared, served and filed a motion for relief from and reconsideration of the Disciplinary Action filed on November 29, 1978. The Court refused to grant appellant a hearing and, on April 12, 1979, through Chief Justice Givan, entered an order denying the motion for relief, etc.

(8) Notwithstanding the void character of the Disciplinary Action, appellant withdrew his appearance in all pending cases except certain actions in the United States District Court where appellant was representing personal financial interests of his own and which appearances were (and are) expressly authorized by orders of the United States District Court for the Northern District of Indiana and federal statutes such as the Federal Civil Rights Acts. Appellant has neither represented parties nor appeared for parties nor participated in any judicial actions other than actions to protect and preserve his personal liberty, civil, and property rights.

(9) On January 23, 1981, the Indiana Supreme Court, acting through its Disciplinary Commission, filed its VERIFIED INFORMATION FOR CONTEMPT AND PETITION FOR ORDER TO SHOW CAUSE against appellant, Owen W. Crumpacker, a citizen, resident, and taxpayer of Hammond, Lake County, Indiana. An ORDER TO SHOW CAUSE was issued over the

signature of the Honorable Richard M. Givan, Chief Justice of Indiana, returnable March 10, 1981. Appellant responded by preparing, serving and filing his verified MOTION TO QUASH ORDER TO SHOW CAUSE AND TO DISMISS VERIFIED INFORMATION FOR CONTEMPT AND PETITION FOR ORDER TO SHOW CAUSE for lack of jurisdiction over his person and the subject matter of the proceedings which had been terminated on November 29, 1978, by the filing of a twenty-seven (27) page Disciplinary Action.

(10) Appellant believed (and believes) that the twenty-seven (27) page Disciplinary Action is void as having been prepared and filed in violation of the Vth VIth, VIIIth and XIVth Amendments to the United States Consitution. Appellant was then put into jeopardy by the Disciplinary Action filed against him, and he was deprived of his life (professional), liberty (good name and reputation) and property (existing fees earned under contracts and the right to earn a living) without being accorded due process (notice and hearing) guaranteed under the Vth and XIVth Amendments. Appellant was denied the right to a speedy and public trial in the district of his residence, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, to have the assistance of counsel before the Supreme Court which convicted him, the right to summarize the evidence before the Supreme Court prior to the November 29, 1978, decision, and the right to be present at every critical stage of the proceedings that resulted in his ruin. Appellant was subjected to cruel and unusual punishment inflicted by the Supreme Court in violation of the VIIIth and XIVth Amendments. His existence, both professional and personal, had been under a cloud for ten (10) years. He has suffered under constant publicity in the form of news releases. He has been compelled to devote all of his time and money (in the

payment of counsel fees and court costs) defending himself against the twenty (20) Counts of alleged professional misconduct and in seeking his personal liberty. In no recorded case in any of the fifty (50) states has a lawyer prevailed at the trial only to suffer complete annihilation and devastation two (2) years later.

(11) Appellant's counsel, John M. Lyons of Valparaiso, Indiana was granted leave to withdraw his appearance for appellant on Monday, June 22, 1981. Appellant received notice of the order on Thursday, June 25, 1981 five (5) days before the contempt case was scheduled to go to trial. On Thursday, June 25, 1981, Chief Justice Richard M. Givan advised appellant that he would not be granted a continuance of the trial set for Monday, June 29, 1981 to enable him to obtain counsel to represent him in the proceedings. The motion to quash and dismiss previously filed had not been either presented or ruled upon prior to the withdrawal of appellant's attorney. Appellant appeared before the Supreme Court of Indiana in its courtroom in the State House at Indianapolis some 180 miles from appellant's residence at 10:00 a.m. on Monday, June 29, 1981. He renewed, orally, his motion for a continuance to enable him to employ counsel. He served and filed an amended and supplemental motion to strike and dismiss the verified information for contempt and the petition for an order to show cause and a further motion to strike and dismiss the Disciplinary Commission's complaint. Appellant moved for pretrial discovery, the production of documents, and the right to a pretrial conference. All of appellant's motions were overruled and denied without argument and the Supreme Court proceeded to put on its case, using Sheldon A. Breskow, executive secretary of the Indiana Supreme Court Disciplinary Commission as its attorney. The State of Indiana was not represented in the proceedings. As promptly as possible, appellant, acting pro se, prepared, served and filed a verified return (answer) denying

the allegations of the verified information for contempt filed over the signature of Sheldon A. Breskow on January 23, 1981. Four (4) additional paragraphs of affirmative defense, duly verified were prepared, served and filed by appellant on his own behalf.

(12) Appellant was tried by the Supreme Court of Indiana sitting en banc in its courtroom in the State House at Indianapolis on four (4) separate trial days, June 29, July 2, July 16 and July 21, 1981. The decision was taken under advisement. By order of the Supreme Court, the Disciplinary Commission and appellant filed proposed findings. This strategy was employed to enable the Court to offically approve the finding tendered by its own disciplinary arm. On September 24, 1981, appellant prepared, served and filed a "Motion for Oral Argument Before the Court on the Question of Special Findings of Fact" in accordance with the VIth Amendment to the United States Constitution as interpreted in the opinion of Mr. Justice Stewart in Herring v. New York, 422 U.S. 852, 95 S.Ct. 2550 (1975). The motion was not ruled upon until on or about January 27, 1982, when the ten (10) page document titled "Contempt Proceedings" was adopted internally. The ruling was not disclosed to appellant until February 11, 1982. The Motion was denied. (Oral argument had never been waived).

(13) The decision of the Supreme Court was filed with itself in chambers on January 27, 1982, in the form of a per curiam opinion, ten (10) pages in length, a copy of which is attached hereto as Appendix, pages 1c through 10c, infra. Its filing was noted, apparently, on an "internal docket sheet" kept by either a secretary of one of the judges or a court administrator. Neither the existence of the document nor its contents were disclosed to appellant until February 11, 1982. (Appellant filed his Notice of Appeal to the Supreme Court of the United States on February 5, 1982.)

(14) The Chief Justice of Indiana issued an Order to Appear for Pronouncement of Sentence which was filed with the Clerk of the Supreme Court on January 27, 1982, and served upon appellant in Lake County on February 2, 1982, by a deputy county sheriff. A copy of the Order is attached hereto as page 1f of the Appendix, infra. The Order conceals the fact that the findings convicting and judgment sentencing appellant had already been prepared and filed with itself in chambers:

> "This court, on its own Motion, having previously heard the contempt proceedings brought under this cause and examined all matters which have been filed by the parties, now finds that the respondent should be directed to appear for the pronouncement of this Court's judgment in the pending contempt proceedings."

(15) Appellant, on February 4, 1982, prepared, served and filed, by certified mail, an extensive Motion to Strike and Expunge the Order to Appear for lack of jurisdiction over the person of the appellant and the subject matter of the proceedings. Believing that the Court had already convicted him in absentia because of the unusual language in the Order to Appear, supra, appellant prepared, served and filed a Motion for Stay of Execution, requesting the Supreme Court to fix the amount of the bail bond. On February 8, 1982, appellant received an order dated February 5, 1982, overruling the Motion to Strike and Expunge Order to Appear for Pronouncement of Judgment, etc. No ruling was entered on the Motion for Stay of Execution and to Fix the amount of the Bond (bail) although the Court had the motion before it.

(16) Appellant and his wife and one of his daughters drove to Indianapolis on February 11th and appeared before the Supreme Court at 10:30 E.S.T. as ordered. The Chief Justice of Indiana speaking on behalf of the Court read the Commitment Order which contained a recital of a portion of the ten (10) page decision filed internally on January 27, 1982. Appellant was found guilty

of Direct Criminal Contempt and sentenced to serve ninety (90) days in the Indiana State Farm at Putnamville, Indiana. Appellant was also found guilty of Indirect Criminal Contempt and sentenced to serve ninety (90) days in the Indiana State Farm, both sentences to be served concurrently. Appellant was directed to surrender himself to the custody of the Sheriff of the Supreme Court by 2 o'clock p.m. to be taken to Putnamville. A copy of the Order of Commitment is attached as Appendix, pages 1d and 2d, infra. Appellant pressed the Court for a ruling on the pending Motion for Stay of Execution and the Fixing of Bail. The Court retired to chambers to prepare an Order denying Motion. The Motion for Stay and to Fix Bail was denied. Appellant's oral motion to change the date of the commencement of the commitment order to February 18, 1982, to enable him to go to Hammond and complete preparation of briefs in civil rights cases due in the Court of Appeals for the Seventh Circuit was denied. Appellant was taken to Putnamville by the Sheriff of the Supreme Court and two (2) members of the Indiana State Police.

(17) Appellant has never disputed the fact that his name was stricken from the roles of the bar of the Supreme Court of Indiana. This is a matter of record. His disbarment was a matter of great notoriety. There was no "holding out as a lawyer" or collection of fees, etc. Appellant reserved the right to prepare letters, papers, etc., in his own office, to assist those who needed help and could not get it from any other source. These are Ist and IVth Amendment rights.

(18) The main issue presented both in the Supreme Court of Indiana and an appeal to this Court is whether Burns' I.C. 33-2-1-4, as construed by the Supreme Court of Indiana, is in conflict with the Constitution and laws of the United States. It reads as follows:

"33-2-1-4 (4-110). Oathes - Fines for Contempt --

Such Court shall have full power to impose and administer all necessary oaths; to punish by fine and imprisonment for contempt of its authority and process; and to compel the attendance of witnesses by attachment and fine." (2 R.S. 1852, Ch. 1, 86, p. 1.)

This statute does not override and mullify the IVth, Vth VIth, and XIVth Amendment rights of a private citizen living in Northwest Indiana.

(19) The Indiana Constitution, Art. 1, § 17. Bailable offenses, provides: Offenses, other than murder or treason shall be bailable by sufficient sureties. Murder or treason shall not be bailable when the proof is evident, or the presumption strong. (Burns Ind. St. Code Edition, const. p. 68.) Art. 1, and 18 Reformation as a basis of penal code. - provides "The penal code shall be founded on principles of reformation, and not of vindictive justice" Burns, supra, p. 69. The Supreme Court of Indiana held in Baldwin v. State (1890), 126 Ind. 24, 25 N.E. 820 persons charged with criminal contempt are entitled to bail. Burns Code Edition, § 34-4-7-7 (3-906) provides for the procedure required in convicting a person of direct contempt. The contemnor is given the right to appeal if the fine is more than $50.00 or he is sentenced to imprisonment. Burns, Vol. 34 § 34-4-7-9 (3-909) covers indirect contempt and expressly grants a right of appeal from a conviction. Punishment for both direct and indirect contempt is fixed by statute. Burns Code Ed., Vol. 34, § 34-4-7-6 (3-906) authorizes punishment by fine or imprisonment or both with a $500.00 limitation on the fine and three (3) months maximum imprisonment.

(20) The Indiana State Constitution guarantees the right of appeal in all cases. Warren v. Indiana Telephone Co., 217 Ind. 93, 26 N.E.2d 399. A convicted defendant may appeal in a criminal case regardless of the chance for reversal. State ex rel. White v. Hilgemann, 218 Ind. 572, 34 N.E.2d 129. State v. Spencer, 219

Ind. 148, 41 N.E.2d 601. The equal protection clause of the XIVth Amendment is violated by suppressing an appeal. In Re Cochran v. Kauses, et al., 316 U.S. 255, 62 S.Ct. 1068, 86 L. Ed. 1453.

(21) Notwithstanding what he believed (and believes) to be a void and invalid disbarment order, as soon as he was able to set up an office following his release from the hospital, he filed a motion to withdraw his appearance of record in every case in which he was the lawyer of record except land condemnation cases in the United States District Court in Hammond where he had a right and duty to protect his personal and family's rights, 28 U.S.C. § 1654. In January, February, and March of 1979, letters were sent by certified mail, return receipt requested, advising every client that appellant was unable to continue to represent them because of the disciplinary action taken against him. The procedures outlined in A & D Rule 23, § 26, West's Ann. Ind. Code. Title 34, p. 879, were followed to the letter.

(22) On April 14, 1980, the date Judge Phil M. McNagny, Jr., ruled in the case of E. D. Crumpacker, et al., v. Owen Windle Crumpacker, Mary Eleanor N. Crumpacker, et al., United States District Court Hammond Division, Civil No. 75 H 212, that appellant was still a lawyer in good standing in the federal court and could continue as such through the conclusion of the proceedings. This case, and companion cases growing out of it, are still being actively prosecuted in the United States District Court and the Court of Appeals for the Seventh Circuit. Norma Kobus, the Disciplinary Commission's witness, (appellant's secretary up until November 4, 1980) testified that 99% of appellant's activities were devoted to the Edgar D. Crumpacker case, Cause No. 75 H 212, and appellant's federal civil rights cases. In no instance did appellant either appear in court or represent to anyone that he had not been disbarred. He has resisted, and will resist, any

efforts to prevent him from pursuing his legal remedies as authorized by the federal consitution and statutes. The defendants in the Federal Civil Rights and Organized Crime Control Act cases, including Sheldon A. Breskow of the Disciplinary Commission, procured the filing of the contempt proceeding after they were sued on August 12, 1980, in the case of Owen W. Crumpacker v. William French Smith, Attorney General of the United States, et al., U.S.D.C., Hammond Division, Civil No. 80 H 451; now pending in the Court of Appeal for the 7th Circuit.

(23) The Supreme Court of Indiana, for the first time in any recorded decision, has organized itself into a trial court to charge, try, and convict appellant, a private citizen, of the the statutory crimes of both direct and indirect criminal contempt. Burns Ind. Codes St., Title 34, 34-4-7-3 (3-903) Indirect and 34-4-7-1 (3-901) Direct. The Supreme Court of Indiana made its own ruling that its decision was not subject to review by the Supreme Court of the United States. Appellant's Notice of Appeal was filed February 5, 1982, nine (9) days after the findings of guilty and sentencing took place in chambers. The Supreme Court of Indiana has knowingly interferred with and prevented the appellant from prosecuting his personal lawsuits, his Federal Civil Rights Act and Organized Crime Control Act Cases and has prevented him from campaigning for or holding public office.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The abuse of contempt powers by courts has always been of grave concern to the American people. Cooke v. United States 267 U.S. 517, 539, 45 S.Ct. 390, 395, 69 L.Ed. 767. As aptly put in the case of State v. Shumaker, (1928) 200 Ind. 623, at page 643 quotem from a Georgia decision:

> "The power of the judiciary rests upon the faith of the people in its integrity and intelligence. Take away this faith, and the moral influence of the courts is gone and the respect for law is destroyed Other department of the government may outlive unjust criticism and may still render service to its people, even when unfairly assailed, but when confidence in the courts is gone, respect for the law itself will speedily disappear, and society will become the prey of fraud, violence, and crime."

(State v. Shumaker (1928) 200 Ind. 623, 164 N.E. 408, was relied upon by Chief Justice Givan in his letter of March 4, 1982, to Paul Jenner, Administrator, Indiana State Farm:

> "Mr. Crumpacker has been convicted of neither a felony nor a misdemeanor but has been found guilty of contempt of court. Thus, he does not come under either the good time statute or the pardon provisions in the Indiana constitution. . . He is, therefore, to be incarcerated for the full ninety days stated in the commitment unless otherwise ordered by this Court.")

Speaking of criminal contempts of court, Justice Holmes for the United States Supreme Court in Gompers v. United States, (1914) 233 U.S. 604, 34 S.Ct. 693, 58 L.Ed. 1115 said:

> "These contempts are infractions of the law visited with punishment as such. If such acts are not criminal, we are in error as to the most fundamental characteristics of crimes as that word has been understood in English speech."

Criminal contempt proceedings in Indiana have always been governed by criminal procedure. Whittem v. State, (1871) 36 Ind. 196; Wilson v. State (1877), 57 Ind. 71. In the Whittem case the court said:

> A proceeding for contempt is in the nature of a criminal prosecution. The results and consequences are the same in the one proceeding as in the other. In both the party convicted may be deprived of his liberty and confined in jail and subjected to the payment of a fine,

and in the Wilson case said: This being a proceeding to punish the appellant for a constructive contempt and being in the nature of a criminal proceeding . . . an affidavit ought to have been filed against the appellant before the attachment was issued.

This Court stated in the case of In Re Oliver (1948) 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682:

"It is the law of the land that no man's life, liberty or property be forfeited as a punishment until there has been a charge made and fairly tried in a public tribunal. See Chambes v. Florida, 309 U.S. 227, 236, 60 S.Ct. 472, 477, 84 L.Ed. 716. The petitioner was convicted without that kind of trial."

This appeal is of far reaching importance. Here, the Supreme Court of Indiana was expressly deprived of jurisdiction to exercise original jurisdiction in any action involving a private citizen by amendment to the Indiana constitution adopted on November 5, 1970. (See Burns, Code Ed., Const. Art. 7, 84., page ___, supra).

Appellant's status as an attorney in Indiana was terminated by virtue of the disciplinary action taken against him in the provision of the disciplinary action filed in the clerk's office at Indianapolis on November 29, 1978. The power to discipline appellant, as an attorney, was terminated when the Supreme Court of Indiana consented to the filing of the document designated as a per curiam disciplinary action.

The Supreme Court of Indiana in the case of State Ex Rel. Indianapolis Bar Association v. Fletcher Trust Company, (1937) 211 Ind. 27, 5 N.E.2d 538, was asked to punish bank lawyers who had not been admitted to the bar for contempt of court in an original action instituted by the Indianapolis Bar Association. The court unanimously held that it had no jurisdiction to entertain contempt proceedings against persons who were not members of the bar of the Supreme Court:

"This court has no jurisdiction over one who is not a member of the Bar and who is practicing law to punish him for contempt, except for some act which affects or interferes with the functioning of this court, for the reason that there are specific provisions of the Statute of Indiana for this purpose. Sections 4-3601, 4-3602 Burns 1933, §§844, 845 Baldwin's 1934. When the law provides a specific remedy to accomplish a certain purpose, that remedy must be pursued.

"Section 4-3601 (§844 Baldwin's 1934), supra, provides that it is unlawful for anyone to practice law without being admitted to the Bar and section 4-3602 (§845 Baldwin's 1934), supra, provides a penalty for the violation of the law. When one is charged under these sections with the illegal practice of the law he has the right to stand trial either before the court or a jury. He has the right to be heard and introduce evidence, and if convicted, he has the right to an appeal to this court. It is not a summary trial as in a contempt proceeding. If this court can assume jurisdiction to try those who are illegally practicing law on contempt charges then it can take away all the rights of the accused as provided in Article 1, Section 13, of the Constitution of Indiana, which provides:

> 'In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor.'"

The Legislative Enactment Under Which The Supreme Court Of Indiana Sought to Exercise Jurisdiction To Indict, Try, And Convict Appellant Of Crimes, To-Wit Burns I.C. 33-2-1-4, Is Repugnant To Amendments IV, V, VI, VIII And XIV Of The United States Constitution.

Burns I.C. §33-2-1-4 has been on the statute books since 1952. The criminal contempt act of 1879 was expressly made inapplicable to the Supreme Court:

"34-4-7-10 (3-910). Application of statute.--The provisions of this act (34-4-7-1--34-4-7-10) shall apply to all proceedings for contempt in all courts of record in this state except the Supreme Court thereof: Provided, however, That nothing herein contained shall be construed or held to embrace, limit or control any proceeding against any officer or party for contempt for the enforcement of civil rights and remedies: etc."

After the decision in State ex rel. Indianapolis Bar Association v. Fletcher Trust Co., supra, the citizens of Indiana through amendment of the state constitution, withdrew all original jurisdiction from the Supreme Court except in matters concerning the admission and disciplining of members of the bar and injunctive proceedings with reference to the alleged illegal practice of law. Burns Ind. Stat. Ann. Code Ed., Const., p. 209, Art. 7, Section 7. In prosecuting a member of the bar of the Supreme Court, to-wit one Biagio J. Perrello for soliciting business in express violation of an injunctive order of the Supreme Court, the court speaking through Judge Hunter stated:

> "IC 1971, 33-2-1-4 (Ind. Ann. Stat. §4-110 (1968 Repl.)) gives the Supreme Court of Indiana 'full power...to punish by fine and imprisonment for contempt of its authority and process...' In addition, the power to punish for contempt is inherent in all courts of superior jurisdiction in Indiana. LaGrange v. State (1958), 238 Ind. 689, 153 N.E. 2d 593. A criminal contempt can be any act which manifests a disrespect for and defiance of a court. The willful disobedience of a court order can constitute indirect criminal contempt. Denny v. State (1932), 203 Ind. 682, 182 N.E. 313. However, the act must be done willfully and with intent to show disrespect or defiance. State ex rel. Indpls. Bar Assn. v. Fletcher Trust Co., supra. In the Matter of Biagio J. Perrello (1973) 260 Ind. 26, 291 N.E. 2d 698."

It has been held by unanimous authority that a court, be it an inferior court or a supreme court, does not have inherent or common law jurisdiction to prosecute an individual for an undefined crime of indirect criminal contempt. The Supreme Court of Indiana, therefore, undertook to hang its hat on Burns I.C. 34-4-7-10 (3-910) in sending appellant to prison for ninety (90) days:

> "It is not surprising that Respondent fails to cite any authority for his contention that IC 33-2-1-4 is unconstitutional. There is none. There is no doubt this Court possesses inherent and statutory power to punish by fine and imprisonment for contempt of its authority and powers." Contempt proceedings, Appendix, p. 5-c infra.

In trying and convicting appellant under the broad authority allegedly vested in the court by this statute, appellant was denied all of the constitutional safeguards including the right to a speedy trial in the city and county of his residence, Klopfer v. North Carolina, 386 U.S. 213, 87 S.Ct. 988, 18 L.Ed. 2d 1, a jury trial, Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491, the right to assistance of counsel, Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799 and Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed. 2d 530. Because the statute does not incorporate in its terms the provisions guaranteeing appellant his constitutional rights, it is void as repugnant to the provisions of the United States Constitution.

The Disciplinary Action Of November 29, 1978, Being Void For Lack Of Notice And Hearing (Among Other Things); The Proceedings Instituted To Enforce The Order Are Likewise Void.

As pointed out under the statement of facts supra, the disciplinary action of November 29, 1978, was filed without notice or hearing and in abject violation of the double jeopardy provisions of the V Amendment. The Supreme Court neither read nor had access to the Record when it permitted the 27-page disciplinary action to be filed.

When the Supreme Court, through its disciplinary commission, permitted the disciplinary action of November 29, 1978, to be received in evidence as the Commission's exhibit number 1, for the alleged purpose of establishing the predicate upon which to send appellant to prison, it opened up the constitutional restrictions establishing the void character of the disciplinary action.

This Court has consistently held that a citizen could not lose his right to continue in his profession in the absence of findings of fact developed through adversary proceedings according to the accepted norms of due process:

"Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." Wisconsin v. Constantineau, 400 U.S. 433, 27 L. Ed. 2d 515, 91 S. Ct. 507 (1971).

* * * * * * *

"The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardship of a criminal conviction, is a principle basic in our society." Anti-Fascist Committee v. McGrath, 341 U.S. 123, 168, 95 L.Ed. 2d 817, 71 S. Ct. 624.

* * * * * * *

"We have repeatedly ruled that the procedural guarantees of the Fourteenth Amendment apply whenever the state seeks to remove or significantly alter that protected status." Paul v. Edward Charles Davis III, 424 U.S. 693, 711, 47 L. Ed. 2d 405, 96 S. Ct. 1155, 1165.

See, Bell v. Benson (1971), 402 U.S. 535, 29 L. Ed. 2d 90, 91 S. Ct. 1586; Morrissey v. Brewer (1972), 408 U.S. 471, 33 L. Ed. 2d 484, 92 S. Ct. 2593; Green v. McElroy (1959(, 360 U.S. 474, 496 3 L. Ed. 2d 1377, 79 S. Ct. 1400. Many of the twenty (20) Counts charged appellant with the commission of criminal acts (Counts I and II, for example):

"A society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt." In Re Winship, 397 U.S. 385, 393-394.

See also, Powell vs. Alabama (1932) 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158, 84 ALR 527; Selling, et al. vs. Radford (1916) 242 U.S. 246; and In Re Oliver (1948) 333 U.S. 257, 68 S.Ct. 499, 92 L. Ed. 682.

It has been universally held that if an order or judgment is void for want of jurisdiction (as pointed out with reference to the November 29, 1978, disciplinary action in the motion to dismiss, affirmative answers and briefs), all efforts to enforce the order through contempt proceedings, either civil or criminal, are likewise void. United States ex rel. Thomas v. Keokuk (1868), 6 Wall. 518, 18 L. Ed. 918; Ex Parte Towland (1882), 104 U.S. 604,

26 L. Ed. 861; Ex Parte Fisk (1884), 113 U.S. 713, 28 L. Ed. 1117, 5 S. Ct. 724; Re Ayers (1887), 123 U.S. 443, 31 L. Ed. 216, 8 S. Ct. 164; Re Sawyer (1888), 124 U.S. 200, 31 L. Ed. 402, 8 S. Ct. 482; Ex Parte Buskirk (C.C.A. 4th 1896), 72 F. 14; Ex Parte Robinson (9th Cir. 1906), 144 F. 835; Louis v. Peck (7th Cir. 1907), 154 F. 273, cert. den. 207 U.S. 593, 52 L. Ed. 355, 28 S. Ct. 258.

On its face, the statute does not authorize the Supreme Court to organize itself into a general court martial, file, prosecute and judge its own charges without doing violence to our constitutional liberties. In Re Murchison, 349 U.S. 133, 75 S. Ct. 625, 99 L. Ed. 942: "Fair trials are too important a part of our free society to let prosecution judges be trial judges of the charges they prefer." In Mayberry v. Pennsylvania, 400 U.S. 45, 91 S. Ct. 499, 27 L. Ed. 2d 572, Judge Douglas speaking for the Court said "whether the trial be federal or state, its concern of due process is with the fair administration of justice."

Appellant was denied his right to be represented by counsel, his right to have compulsory process, his right to discovery, and his right to prepare for trial. Because the Supreme Court did not complete its case on Monday, June 29, 1981, appellant was able to prepare and file answers in the nature of general denial, etc. and to subpoena witnesses. All of the Commission's motions to quash subpoenas duces tecum caused to be issued and served by appellant were quashed. His motion for the production of documents presented on July 2, 1981, resulted in a $500 fine and ninety days in prison for alleged direct criminal contempt of court.

The refusal on the part of the Court to permit oral argument on the findings, before the decision was a patent violation of appellant's sixth amendment rights in view of the size of the Record. Herring v. New York, 422 U.S. 852, 95 S. Ct. 2550 (1975).

The order of disbarment contained in the 29-page disciplinary action is vague and indefinite. The allegations in the verified

information for contempt do not comply with the requirements of the sixth amendment of the Constitution. In speaking of similar charges, the Supreme Court of Indiana in the case of State ex rel. Indianapolis Bar Association v. Fletcher Trust Company, supra, stated:

> "The respondent not only filed a verified response denying the charges contained in the information and that there was no intention to defy the authority of this court, but it also set out in its response the acts which it actually performed in its course of business. Whether any of the acts done by the respondent can be said to be 'practicing law' is debatable and the courts of the country are at variance upon the subject. It can at least be said there is room for two constructions, so that the intent of the party becomes the material question of inquiry, and a denial on oath by such party of intent to violate any rule or order of the court is conclusive. The great weight of authority holds that in cases of constructive or direct criminal contempt, if the contempt consists of acts or statements which are capable of two constructions, one of which would amount to contempt and the other not, then the intent becomes the material question and if the contemnor denies under oath that he did not intend to violate an order or rule of court he is entitled to be discharged."

It appears on the face of the ten (10) page document captioned "Contempt Proceedings" filed internally on January 27, 1982, that appellant's conviction of the crime of "Direct Criminal Contempt" is inviolation of the Vith Amendment, and, therefore, appellant was illegally confined. The alleged "Direct Contempt" occurred on July 2, 1981. The conviction was entered on January27, 1982, (see, ten (10) page "Contempt Proceedings", appendix 5c, infra). This is palpably wrong. Cooke v. United States (1925), 267 U.S. 517, 45 S. Ct. 390, 69 L. Ed. 767; Anderson V. Dunn, 6 Wheat 204; In Re Michael, 326 U.S. 224, 66 S. Ct. 78, 79; Mayberry v. Pennsylvania (1971) 400 U.S. 455, 91 S. Ct. 499, 27 L. Ed. 532; In Re Dellinger (7th Cir. 1972), 461 F. 2d 389; Offutt v. United States, 348 U.S. 11, 75 S. Ct. 11, 99 L. Ed. 11; United States v. Meyer (1972), 149 U.S. App. D.C. 212, 462 F. 2d 827; In Re McConnell (1962), 370 U.S. 230, 234, 82 S. Ct. 1288, 1291.

Lastly, under the sixth amendment to the United States Constitution, appellant had a right to a public trial. This means that he was entitled to be physically present at every critical stage of the proceeding. The determination of guilt and the sentencing are the most critical stages of a criminal trial. A conviction of a crime in the absence of the defendant, and without any notice being given, is void because the court, in so acting, deprives the defendant of his constitutional rights. Tahash v. Clements, 234 Ind. 197, 125 N.E. 2d 439; Dean v. State, 234 Ind. 568, 130 N.E. 2d 126.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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